S.B.CIVIL MISC. APPEAL NO.1002/2006
(National Insurance Company Ltd. Vs. Smt. Bharti Solanki & ors.)

DATED: 26.07.2006

HON'BLE MR.JUSTICE DINESH MAHESHWARI

Mr.Sanjeev Johari with Ms Meenakshi Maheshwari for the appellant
Mr.Mahaveer Bishnoi for Mr.Rakesh Arora for the claimants (caveator)

BY THE COURT:

By way of this appeal, the insurer of the vehicle involved in a fatal accident, having been accorded permission to contest the claim for compensation on merits, seeks to question the award dated 18.03.2006 made by the Motor Accidents Claims Tribunal, Bikaner in Claim Case No. 120/2005 on its quantification of compensation.

Relevant background facts are that on 19.02.2005 at about 3.00 p.m. the deceased Sanjay Solanki, aged about 35 years, while riding his motorcycle was hit from behind by a truck bearing registration No. RJ 07 G 1457, insured with the appellant, belonging to the non-applicant No. 1, Kheta Ram and driven by Chunni Lal, non-applicant No. 2; the deceased sustained head injury and succumbed while on way to hospital. The wife and minor children of the deceased made a claim for compensation on account of accidental death of Shri

Sanjay Solanki in the sum of Rs. 97,90,808/- against the driver, owner and insurer of the offending truck with the submissions, inter alia, that the deceased, 36 years in age, was employed as Field Operator with Indian Oil Corporation, Bichhwal, Bikaner earning salary income of Rs. 29,906/- per month; having prospects of promotion every five years and his likely to have served for next 24 years. The owner and driver of the truck refuted the claim averments and also pointed out the liability of the insurer. The appellant-insurer also denied the claim averments and alleged want of valid driving licence with the truck driver and that the accident occurred for the negligence of the deceased himself.

After framing of necessary issues and taking evidence the learned Judge of the Tribunal held on issue No. 1 with reference to the unrebutted testimony of the eye-witness Ram Chandra and the documentary evidence produced by the claimants that the non-applicant No. 2 caused the accident with rash and negligent driving of the offending truck by hitting the motorcycle from behind and there was no contribution to the accident on the part of the deceased. While rejecting other objections of the insurer in issue No. 3 with reference to the driving licence of the truck driver produced on record (Ex. 13) and want of any evidence by the insurer, the learned Judge took quantification of compensation in issue No. 2. The

learned Judge found from the pay slip of the deceased for the month of January 2005 that he was receiving net Rs. 18,100/- per month after deductions from his salary of Rs. 29,906/-. Learned Judge found that deductions included Rs. 563/- for scooter loan, Rs. 1803/- for society loan, interest on loan at Rs. 365/-, festival advance Rs. 400/- and furniture loan Rs. 84/- and being part of income of the deceased, considered it proper to include them for the purpose of his net income and, therefore, took his monthly income at Rs. 21,315/-, deducted one-third on his personal expenditure and with net dependency at Rs. 14,210/- per month, took the multiplicand at Rs. 1,70,520/- and capitalized by a multiplier of 16 to arrive at a pecuniary loss figure of Rs. 27,28,320/-. The learned Judge further allowed Rs. 20,000/- to wife of the deceased towards loss of consortium and Rs. 10,000/- to each of the two children for loss of love, affection and guidance of their father and so also Rs. 5,000/- for funeral expenses. The Tribunal, therefore, made the award in the sum of Rs, 27,73,320/- and allowed interest @ 7.5% per annum from the date of filing of claim application i.e. 27.04.2005.

The insurer seeks to contend in this appeal that the award on its quantification of compensation remains excessive and unreasonable where exorbitant multiplicand of Rs. 1,70,520/- has been adopted and award has been made with

application of higher multiplier of 16; and the Tribunal has erred in awarding interest @ 7.5% per annum. The claimants have put appearance in caveat and learned counsel for the claimants has, while supporting the impugned award, submitted that the award made by the Tribunal in this case remains rather on the lower side where substantial future prospects of the deceased, who was about 35 years in age and was in settled employment with Indian Oil Corporation have not been considered; and in fact the assessment ought to have been made at about double the income last earned by the deceased; and on proper assessment, the award ought to have been stated rather at higher figure. However, learned counsel for the claimants very fairly submitted that though the appeal submitted by the insurer remains groundless but in view of the corpus being created by the reasonable award amount and the claimant No. 1, wife of the deceased being otherwise in employment, the claimants are ready to accept the compensation calculated by application of a multiplier of 15 to the multiplicand adopted by the Tribunal and further by reducing at half the amount awarded towards non-pecuniary loss.

Having heard learned counsel for the parties and having examined the impugned award, this court is satisfied that the award on its quantification of compensation cannot be said to

be so excessive as to warrant interference by the appellate court in the appeal preferred by the insurer; the grounds urged by the insurer remain meritless and the appeal deserves to be dismissed; but in view of the reasonable stand taken by the learned counsel for the claimants, it shall be in the interest of justice that the award be re-stated.

The deceased has been shown in settled employment as Field Officer with the Indian Oil Corporation, having last salary at Rs. 29,906/-per month and getting at least Rs. 18,100/- per month after all deductions, including those towards loans and advances. The deceased being 35 years and 3 months in age had obviously a bright future ahead. The income assessment made by the Tribunal as noticed hereinbefore remains rather on the lower side. It is noteworthy that the Tribunal has not provided for anything towards the component of future prospects and assessed the multiplicand only on the basis of last net income available after admissible deductions. Application of multiplier of 16 too cannot be said to be abnormal or much higher. In view of substantial salary income of the deceased, the assessment of pecuniary loss as made by the Tribunal remains moderate and, therefore, even if a fraction of award amount regarding non-pecuniary loss appears on a bit higher side, the ultimate award made by the

Tribunal cannot be said to be excessive or exorbitant in proportion of the income of the deceased.

Learned counsel Mr. Sanjeev Johri, arguing for the appellant strenuously contended that multiplier in this case could not have been more than 13 as adopted by the Hon'ble Supreme Court in the case of Managing Director, TNSC Ltd. Vs. K. I. Bindu (2005) 8 SCC 473. The submission is not well founded. Assessment of loss in a motor accident claim case is the sum total of various factors including imponderables, perceptible potential as well as unknown uncertainty. A large part of assessment remains based on estimates, of course with reference to certain known fundamentals like the last known income of the deceased and his and claimant's age; and certain basic principles like those enunciated in Susamma Thomas: (1994) 2 SCC 176; and like the guidance as available from Second Schedule to the Motor Vehicles Act. The Hon'ble Supreme Court has explained the purpose behind taking such exercise of assessment of damages, features of the process of assessment and the principles applicable thereto in Bindu's case (supra) thus:

> ''10. The assessment of damages to compensate the dependants is beset with difficulties because from the nature of things, it has to take into account many imponderables e.g. the life expectancy of the deceased and the dependants, the amount that the deceased would have earned during the remainder of his life, the amount that

> he would have contributed to the dependants during that period, the chances that the deceased may not have lived or the dependants may not live up to the estimated remaining period of their life expectancy, the chances that the deceased might have got better employment or income or might have lost his employment or income together.
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> "11. The manner of arriving at the damages is to ascertain the net income of the deceased available for the support of himself and his dependants, and to deduct therefrom such part of his income as the deceased was accustomed to spend upon himself, as regards both self-maintenance and pleasure, and to ascertain what part of his net income the deceased was accustomed to spend for the benefits of the dependants. Then that should be capitalized by multiplying it by a figure representing the proper number of years' purchase.
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> "12. Much of the calculation necessarily remains in the realm of hypothesis ''and in that region arithmetic is a good servant but a bad master'' since there are so often many imponderables. In every case ''it is the overall picture that matters'', and the court must try to assess as best as it can the loss suffered.''

Thus, ultimately, it is the overall picture that matters; and in that context, every single case is required to be visualized on its own peculiar facts and this court is clearly of opinion that no cut-paste formula can be assumed for assessment of loss in the claim for compensation under Section 166 of the Motor Vehicles Act. The insurer is not justified in suggesting that

because multiplier of 13 has been applied in Bindu's case, for the deceased in 36 years of age, such multiplier of 13 only is required to be applied in the present case too. The submission is based more on numeral than on rationale and cannot be countenanced. Even a slight difference in the circumstances could change the whole scenario, and the factual matrix in the appeal filed by the owner of the offending vehicle in Bindu's case (supra) as noticed by the Hon'ble supreme Court shows that, inter alia, it was contended that the there was no loss of dependency as the respondent No. 1 got compassionate appointment in place of the deceased in the Civil Supplies Corporation. The Hon'ble Supreme Court has considered it appropriate to apply the multiplier of 13 in the said case taking into account relevant factors but the submission of learned counsel for the insurer in the present case is not well founded that a multiplier only of 13 is envisaged by the Hon'ble Supreme Court in all such cases where the deceased is in the age of around 35-36 years.

The award made in the present case, though on application of a multiplier of 16, is not highly excessive in the proportion of the income of the deceased nor the figures on pecuniary loss have been arrived by the Tribunal arbitrarily. The net income of the deceased at Rs. 21,315/- per month has been assessed after subtracting the permissible

deductions from out of his proved salary of Rs. 29,906/- per month; one-third has been deducted for personal expenditure of the deceased; and multiplier of 16 as envisaged by the Second Schedule to the Act for the age group of 35-40 years has been applied, though the deceased was just 3 months above 35 years. It is significant to notice that although the deceased was more or less in settled employment as Field Officer with Indian Oil Corporation and had a long career ahead, yet the Tribunal has not provided for anything towards future prospects.

Though the submission of Mr. Johri for revision of multiplier in this case does not carry weight, however, in the context of the emphasis for application of multiplier of 13 and not more, it shall be apposite to notice that even if just 25% enhancement be provided for future prospects on the last net income of Rs. 21,315/- and after deduction of usual one-third for personal pocket of the deceased a multiplier of 13 is applied, the pecuniary loss stands at about 25.57 lacs. Yet further, even if 40% were deducted instead of 33% towards personal expenditure of the deceased in view of his wife being in service earning independently, pecuniary loss shall still stand around 24.93 lacs even on a multiplier of 13. The assessment as ultimately made by the Tribunal, therefore, could only be said to be a bit higher but not so excessive as to

warrant interference by the appellate court in an appeal by the insurer. The rate of interest at 7.5% per annum too cannot be said to be wholly unreasonable and needs no interference. The appeal, therefore, deserves to be dismissed.

In this case, though the submissions as attempted to be made on behalf of the insurer-appellant do not merit acceptance, however, it has been very fair on the part of the learned counsel for the claimants to submit that in view of the corpus being created by the award amount and the wife of the deceased being otherwise in employment, the claimants would be ready to accept the compensation calculated by application of a multiplier of 15 to the multiplicand adopted by the Tribunal and further by reducing at half the amount awarded towards non-pecuniary loss. Having regard to the overall circumstances of the case, and reasonable stand taken by the claimants, this court is satisfied that the claimants, wife of the deceased in 31 years of age and children of the deceased in 7 and 2 years of age are seeking just compensation on account of accidental death of 35 ¼ years old Sanjay Solanki; and are not aiming at any windfall or gold mine. In view of such fair concession, although the appeal is being dismissed, the award deserves to be re-stated suitably.

In the aforesaid view of the matter, while contentions of the insurer against the award are rejected and the appeal is

dismissed, however, on the consent of learned counsel for the claimants, the calculation of amount of compensation in the award is modified and while applying a multiplier of 15 to the multiplicand of Rs.1,70,520/-, pecuniary loss is stated at Rs.25,57,800/-. The claimant No.1 is allowed an amount of Rs.10,000/- towards loss of consortium and claimant Nos.2 and 3 are allowed Rs.5,000/- each towards loss of love, affection and company of their father and in that manner, non-pecuniary loss is stated at Rs.20,000/-. The amount of Rs.5,000/- awarded towards funeral expenses is retained and the award is stated at Rs.25,82,800/- in place of an amount of Rs.27,73,320/-. It shall be required of the insurer to make deposit of the amount payable under the award, if not already deposited, within 30 days from today.

(DINESH MAHESHWARI),J.

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